Usurious Loans Bill.

Mr. Thomas Manjuran.—I beg leave to introduce the Usurious Loans Bill. I may state just a few words with regard to the Bill itself. A Bill more or less on the lines of this Bill was passed by this Council about two or three years ago. It was at that time thought that it was not necessary to promulgate the Bill and the Bill was hence not brought into force as law. The situation that has since been created by the economic depression has brought to the notice of the Government the fact that some legislation more or less on the lines of this Bill may be useful and hence this bill substantially as passed by this Council has been re-introduced here with some modifications.

The general principles contained in this Bill are practically the same as those accepted and passed by this House. The modification with regard to the minimum rate of interest was the result of further investigation. Although this Bill was once passed substantially in the present form by this Council I would still press that the matter may be re-investigated by a Select Committee of this House. It is not put forward as the last word of this complicated problem. So the help of the Hon'ble Members of this House is sought and since after I have introduced the Bill I am going to move that the Bill may be referred to a Select Committee. I don't go into more details now. I hence move that the Bill be read in Council.

Mr. C. J. Mathew.—I second it.

Mr. A. Eachara Menon.—Mr. President, Sir, I oppose this Bill. The word usurious connotes the prevalence of an unconscionable rate of interest obtaining in the State. The Government have recognised it. But how are they going to remedy this evil? It is by codifying a power which the Judges were using. They have been exercising the discretion even now. There have been many cases in which this kind of discretion had been exercised but rarely in favour of the debtors. And cases are not wanting in which the Judges of the Chief Court in their wisdom have reversed the decree of the lower courts where the presiding officer have been a little humane. The Bill does not contain any proposals as for the nature of the rate of interest. A Bill without fixing the rate of interest, the maximum rate of interest at least is no use, is *non est*. It is not right to allow the Judges to fix the rate as they pleased. For there will be Judges and Judges and there may be some who have the tinge of hundi merchants in them. It is certain that the Government Advocate and the Leader of the House would come upon me saying that there are very many difficulties in fixing the rate of interest. But I am sûre the Heaven are not going to fall on our heads if we do so since that calamity did not take place

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when we fixed the rate of interest in the Kuri Bill. Since there is no certainty regarding the rate of interest to be imposed I oppose the bill in its present form.

Mr. Thomas Manjuran.—With the permission of the Chair I would like to make the point clear. This is only a Bill. I submitted that the Bill will be referred to a Select Committee which Select Committee can make such recommendations as they choose as to give the Bill whatever shape they desire. With regard to the argument that country law have now got power to reduce interest, I need say that the courts have not got such power. The courts have power only to interfere when they are satisfied that the high rate of interest is due to coercion, undue influence, etc. In British India they have got that power. This is only a copy of the Act in British India.

I may also refer to another aspect. The Bill as now brought is not intended to have any retrospective effect. Whether retrospective effect is necessary or not may be considered by the Select Committee. As it is brought, the Hon'ble Members should see from section 2 that the Bill can apply only to the suits to which this Regulation applies. Section 2 says:—"(a) Any suit for the recovery of a loan made after the commencement of this Regulation or for the enforcement of any security taken or any agreement; whether by way of settlement of account or otherwise made after the commencement of this Regulation in respect of any loan made either before or after the commencement of this Regulation". Hence the Bill as it now stands, and as the corresponding law is universally interpreted in British India, has no retrospective effect at all. Whether this House is going to give it retrospective effect or not is a matter for House to decide. Hon'ble Members need not be under the impression that the Bill, as introduced, is going to have retrospective effect.

Dr. A. G. Menon.—There was a similar bill in the first Council?

Mr. Thomas Manjuran.—It was passed by this Council. But it did not come into force.

Dr. A. G. Menon.—I think it was vetoed by His Highness.

Mr. Thomas Manjuran.—The Government did not think it necessary then. On account of the present economic depression, the Government thought it necessary to reconsider their decision.

Mr. Joseph Pettah.—Sir, I request I may not be misunderstood if I oppose the Bill at this stage even after the explanation given by the Hon'ble Member for Law.

The Select Committee might make certain changes as regards certain aspects of the Bill; but I find even the very principle on which the Bill is based is an objectionable principle

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and therefore, if at all a change is made it would be a substantial or a radical change which I do not know whether any Select Committee has the power to do. The main principle or the fundamental principle on which the Bill is based is the unlimited discretion given to the Courts. I am in full sympathy with the debtor class and I want that some sort of relief should be given to them, but not by creating so much of uncertainty in the financial world. The fundanental objection to the Bill as I said, is the uncertainty into which it immerses the whole financial world. This sort of uncertainty—anybody who has got some idea of matters industrial and commercial would agree with me would spell disaster to all banking and credit in the country. And again it would be disastrous ultimately to the borrowing classes themselves, because if we want to have any credit operations in the country the very fundamental thing that we want is there should be some certainty of enforcing contracts in the future. The very principle of the Bill throws to the wind all private contracts, and gives unlimited and ill-defined discretion to the Courts to go behind such contracts and re-open any transaction and settle it according to their discretion. That means private contract is not to be respected at all. Whatever be the arrangement made between private parties these arrangements are not going to be respected by the court. In this atmosphere of uncertainty could any respectable bank or any respectable credit agency work with any idea of security or safety? This Bill would be penalising honest and systematic banking at the same time might be encouraging certain class of banks and individual bankers who will have recourse to all sorts of dishonest methods for evading the Bill. That is what we find in other countries where similar attempts have been made. It may be there is a similar measure on the statute book in British India. But this argument of similarity very often fails when we go deeper into it and discover the dissimilarity in the circumstances which led to the passing of such a law in certain provinces of British India.

The Hon'ble Member for Law has said that this Bill is on the lines of another Bill already passed in this Council some time ago, with some modification. But the modification makes a world of difference between this Bill and that Bill. Fixity in the rate of interest is the fundamental thing. If that fixity is not there, it makes a world of difference. In the previous Bill therewas some amount of fixity. But in the present Bill it is all a matter of discretion. I understand that the rate of interest in many cases is exhorbitant. I also maintain that some relief should be given to the debtors. In very many cases exhorbitant rates of interests say 30 per cent, 24 per cent and 15 per cent, are exacted even by Banks. Therefore, it is an urgent neces-

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sity that some relief sould be given to the debtor class. But by trying to give relief to the debtor class we should not create such uncertainty in the financial world as will spell disaster to all commerce and industry. Again this Bill was published only the other day, justthe 7 days' notice strictly necessary under the Standing Orders, was given. Even as it is I have had a talk with some of the people concerned in credit transactions and they were unanimously of opinion that this Bill will be a serious handicap, a serious menace to all sorts of organised credit in the country.

Now again, when we come to Banks, the Banks stand between two parties. They have the creditors on one side and the debtors on the other side. They pay the depositors a certain rate of interest. This they realise from their debtors. If what they could collectfrom the debtors is uncertain how can they regulate their interests on the deposits. Banking thus becomes simply impossible if this Regulation is enforced. If it is to remain a dead-letter on the Statute there is no complaint. But in that case where is the necessity for a Regulation like this? On the other hand, if it is enforced, it will certainly be a serious handicap to all kinds of organised banking. Banks will not have any inducement to take any kind of deposits hereafter because depositors will have to be paid something definite and how can they be paid that unless the Bank is sure of what they could get from the borrowers? Now-a-days people save much capital because they are sure of getting something by way of interest for the deposits they make at the Banks. If banking becomes a failure all accumulation of capital will also be discouraged in this country. Eminent authorities have said that one of the most important causes of industrial backwardness in India is the scarcity of banking systematically organised and well devoloped banking. It is only by developing banking that we can have a sufficient development of the industrial and commercial conditions in our country. But this Bill will be a death-blow to our banking and therefore a death-blow also to our industries.

Again, coming to the discretion given to the courts. The word 'court' is an impersonal term. It carries with it an idea of eminence, venerability and exalted character. But after all we must remember that the presiding deities of the courts are also mortal men. Eminent authorities again may be quoted for the view thatunlimited discretion would lead to corruption and jobbery. That is why in other spheres the Government servants are notgiven that unlimited discretion. If they are not ledged in byprinciples, by Regulations, any act could be justified as having been done according to discretion. Unlimited discretion is not to be given even to executive authorities. But of

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course, the court is a venerable body. Still unlimited discretion in a matter which vitally affects the economic condition of the people should not be given even to such a body. Law must restrain even the courts. The law must be above even the law-givers. Every judicial authority will have to be governed by certain laws which are definite. The indefiniteness of law if I may refer to the ancient Roman conditions in the early history of Rome was causing very serious hardship to various classes of people so that they had to make the laws definite and well-known. Here is case where all the laws will be thrown into the waste-paper basket, and discretion would be given to the courts to do as they please. Perhaps, I may be told that certain instructions would be given from time to time by the Chief Court. These instructions need not be acted upon. Therefore, if the law is to reign supreme, even the law-givers are to be subordinate to the law, I say even the supreme court in the country should not be given as much discretion and power as is contemplated by this particular law.

Finally, it will be disastrous even to the borrowing classes themselves, because with the disorganisation of banking there will be the consequent restriction of credit in the country; capital will not be accumulated and even those who have got a little capital will not feel induced to lend their money; so that the unltimate result will be that all those who have money will even bury it as in ancient days when there were no banking facilities, when there was no security in the country and when there was little probability of getting back the loans. People in those days preferred to hoard up their money. They even buried it. Therefore, if we want to have a free flow of credit in the county, which will be advantageous even to the borrowing class, this sort of unlimited discretion which leads to complete uncertainty, should not be given to the courts. The experiment was tried about 1875, after the Deccan Agriculturists' Riot, in British India. A similar measure was introduced and we have got eminent authorities to say that it was a failure in as much as it restricted agricultural credit in the country with the result that the poor agriculturists could not get any credit. The Government itself had then to come to the rescue by passing the the Land Improvements Act and the Agriculturists Loan Act and similar measures by which the Government had directly to issue loans to the agriculturists. I am sure the Cochin Government are not equal to the task of directly issuing money to all the Agriculturists and to the debtor classes. If then they want the public to respond to the demand and to lend the necessary money, also if they want the pepole to save the money that is required for the financial and industrial requirements of the country they should not gag all credit and banking operations

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but they must safeguard the interests of the creditors also while at the same time they safeguard the interests of the debtors. To repeat once again, I want that relief should be given to the debtor class. I also maintain that the rates of interest now collected in very many cases are excessive. I want these rates should be reduced. I want some fixity with regard to the rates of interest which may be exacted by the creditors.

The Hon'ble Member for Law has said that this is a matter which can be modified by the Select Committee. But the very fundamental principle on which the Bill is based, is the unlimited discretion given to the courts. If we want to have some fixity in the matter this discretion will have to be substantially modified by introducing certain fixed rates of interest below which the courts may not go and above which the creditors may not exact. If that is the position I would have whole-heartedly supported the measure. But as it is, the very basic principle of the Bill is faulty; and for this reason, and only for this reason, I oppose the Bill.

Mr. A. Sankara Poduval.—I have very great pleasure in supporting this motion. I am sorry, I cannot see eye to eye with the Hon'ble Member for Adoor, in this matter. This is, in my view, a piece of legislation which is long overdue. The British Act on which this Bill has been framed is of the year 1918, and here we are in 1934. Sixteen years have rolled on, and these apprehensions laid before the House by the Hon'ble Member for Adoor were equally applicable to British India also, and British India has prospered in spite of the Usurious Loans Act. On the other hand, I would say that it is because the Usurious Loans Act was passed in British India that banking has been systematised and banking on a proper basis has been carried on. Respectable men who are in possession of money want to invest money where it is safe to invest it: they are not particular about the rate of interest. It is the realisation of an unconscionable rate of interest that is sought to be remedied by this Bill.

And with regard to the other objection raised by the Hon'ble Member for Adoor that 'discretion' is a very wide term, it is patent that the discretion is only as to what has to be awarded concerning the rates stipulated between the parties. It is not unlimited. And the argument that the discretion would not be properly exercised by courts of law is not entitled to any weight whatever. Judicial courts are the repositories of our liberty, freedom of action and our safety. The progress of society very largely depends upon the protection approved by our courts and the Hon'ble Member gets up and says that he has no faith in the discretion of courts.

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With regard to the apprehension that banks might fail, I want to emphasise that it is absolutely unfounded. Banks will only benefit by the Bill. That only few cases come to court, out of the innumerable transactions entered into between banks and persons in need of money, would itself be sufficient to show that there would be very many occasions in which courts will have to exercise this discretion. Normally, the debtor pays his loans. It is only in a very few instances where the rate of interest is unconscionable, that the matter happens to be taken to the court at all. Discretion exercisable by the court in regard to the regulation of interest, would be very wholesome; it would promote honest banking. The fundamental principle is alright. The fundamental principle has been found to work successfully in British India and in all other civilised States. The details, no doubt, would be threshed out by the Select Committee, and I don't want to waste the time of this House by speaking at greater length on the subject.

Mr. George Chakyamuri.—Sir, I should also like to support this Bill. In fact, I amsurprised that some of the Hon'ble Members here who have been clamouring for all sorts of remedial measures coming and opposing this Government measure intended to give some relief to the poor people. Why should you oppose this Bill at this stage? Let us try to help the Government in solving the difficulty. When the Government comes with a remedial measure, to stand up and oppose the Bill is a position which I find it difficult to swallow. It is not also possible for the Government to fix the rate at this stage. The discretion has to be given to courts. The Bill has been working for 16 years and it has not done any havoc in British India. I fail to see why the Hon'ble Members should be very anxious about fixing the rate of interest. That has necessarily to be left to the discretion of the court. It depends upon the position of the parties and so on. The rate of interest in one transaction may not be the rate of interest in another transaction. In each transaction, the interest has to be fixed by the court taking into consideration all these things. I cannot for one thing understand the Hon'ble Member's argument that giving discretion to courts is a dangerous thing. He said that in Rome there was some trouble and so on. But we have passed over 2,000 years. We are not going down like Romans, because of the uncertainty of law. As I submitted in the beginning it is absolutely clear that with regard to each transaction the interest has to be fixed by the court taking into consideration all the relevant facts and circumstances of the case. That is one thing. I may also submit that that discretion will always be exercised with due care and caution. I may also inform the Hon'ble Member that the discretion is now being exercised with regard

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to future interest and costs also. Now, the courts have absolute discretion in our State to award any rate of interest and there have been no complaints whatever with regard to the exercise of the discretion by our courts. Therefore, to oppose a measure that has been introduced practically at the instance of this House, a measure that has been once passed by this House, is very curious. I would, on the other hand, find fault with the Government for delaying such a measure. Therefore, I strongly support the Bill.

Mr. Thomas Manjuran.—I do not think I need say anything more than what has been said by the Hon'ble Member for Palluruthi, by way of reply. I am sorry I cannot accept the 'economic flat rate' that the Member for Adoor proposes. Should the committee, however, propose any 'flat rate', it would be a matter for consideration for the Council. But to oppose the Bill and at the same time say that some relief should be given to the agriculturists certainly passes my comprehension. Nor can I understand the supposed obstacles put forward by the Hon'ble Member for Adoor. Where are the limitations that prevent the Select Committee from converting the Bill into a satisfactory Bill even as the Hon'ble Member wishes it to be? One would also think from the apparent nature of this opposition that it is to say the least a capitalist's opposition. I know the Hon'ble Member personally and I did not expect that such opposition would come from him. I am really surprised that the Hon'ble Member, who understands these things very well, should oppose this Bill—a Bill for which he has been clamouring time and again in this House. With these words and without venturing to go into any more details and assuring the Hon'ble Members that the skies have not fallen down in British India although a similar measure has been in force there for the last 16 years, I submit that the Bill be read in Council.

Motion put and carried.

Mr. Thomas Manjuran.—I have already stated, in moving the first reading of the Bill, that it may be advantageous to have a Select Committee appointed to go into this matter and I propose that the following gentlemen may be constituted into a Select Committee.

(1) Mr. M. A. Chakko
(2) ,, A. Sankara Menon
(3) Dr. A. R. Menon
(4) Mr. K. Mohamed Seethi
(5) ,, Joseph Pettah
(6) ,, K. Ayyappan

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(7) The Diwan Peishkar
(8) Secretary to the Diwan
(9) Mr. George Chakyamuri
(10) ,, S. S. Koder
(11) Government Advocate.

Mr. C. J. Mathew.—I second it.

Mr. T. K. Nayar.—I propose the name of Mr. A. Eachara Menon also.

Mr. E. Ikkanda Warriar.—I second it.

Motion put and carried.

President.—The Diwan Peishkar will be the Chairman. The Committee will report within a month.

Amendments to Standing Orders.

Mr. Thomas Manjuran.—This amendment, as the amendment itself very well shown is only intended to confer power on the Government to extend the term of Council sessions in certain eventualities. The amendment is absolutely non-controversial; it only gives the Government the power to extend the term of Council sessions when necessary. As it happened during the last budget session, as the Hon'ble Members will remember, a day was lost by the adjournmant of the House and there was no time for non-official business. The inelasticity of the rules prevented the Government from extending the session. This amendment is only intended to confer upon the Government the power to make such extensions wherever necessary. I do not think that there is any necessity to appoint a Select Committee, unless the Hon'ble Members particularly wish it.

Mr. T. K. Nayar.—In the amendment it is said 'during the course of a meeting'; I don't understand where is the difficulty in placing a copy of the notification on the table. If the term is extended during the sitting, I do not think there is any difficulty of supplying a copy. Here, it is said, that a notification will be published in the Gazette. That won't suffice.

Mr. Thomas Manjuran.—There is absolutely no difficulty. By all means that will be done. If such an amendment is proposed I shall be only glad to accept it.

Committee to enquire into the defects in administration of the Department of Depressed Classes.

മിസ്റ്റർ കെ. പി. വള്ളോൻ.—"അധഃകൃത സംരക്ഷണ വകുപ്പിന്റെ ഭരണ ദൂഷ്യങ്ങളെപ്പറ്റി സത്യമായും ന്യായമായും ഒരു അന്വേഷണം നടത്തി റിപ്പോർട്ട് വരുത്തിയ്ക്കുവാൻവേണ്ടി ഉദ്യോഗസ്ഥന്മാരല്ലാത്ത മാന്യന്മാരടങ്ങിയ ഒരു കമ്മിറ്റിയെ നിയമിയ്ക്കുവാൻ വേണ്ടി ഈ സഭ ഗവർമ്മെണ്ടിനോടു ശുപാർശ ചെയ്യുകൊള്ളുന്നു".

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